from one who had no title to sell it to him. The appellant's possession of the said land was, therefore, hostile and constituted adverse possession in law. On the facts found by the Commissioner the appellant's possession was actual, visible, exclusive and hostile and had continued for more than twelve years to create a bar under the Limitation Ordinance. By the time the Collector of Land Revenue, Bukit Mertajam made the said order of distribution without presumably having made a proper and exhaustive enquiry, and when the respondents purported to buy the said land in 1971 from the said four beneficiaries of Mat Khamis bin Japan, the appellant had already acquired a title to it by adverse possession as against the real owner, namely the estate of Mat Khamis bin Japan (deceased).

I also considered that the title of the appellant to the said land which he had acquired by adverse possession was not affected because no action had been taken yet by the Commissioner under section 44 of the said Act to issue him with a replacement title or to endorse his replacement interest on the appropriate folio of the Interim Register. Even if *Bridges* v. *Mees*[5], which was quoted by counsel himself could be resorted to, it could be argued that when the appellant in this case acquired a title by adverse possession in the said land the real owner at that time i.e. the estate of Mat Khamis bin Japan was at most, if at all, a statutory trustee for him and that when the respondents bought the said land from the beneficiaries of Mat Khamis bin Japan and had it registered under section 215 of the National Land Code, they did not acquire any prior interest to that of the appellant. With respect I also did not agree with Mr. Ariffin's contention that only section 58 and not section 59 of the said Act was applicable in this case. The provisions of the said Act must be read together and it is clear from the provisions of section 59 of the said Act that nothing in section 58 shall be held to prejudice the rights of any person such as the appellant arising by virtue of the operation of the Limitation Ordinance, 1953. I agreed with the submissions of learned counsel for the appellant that the said Board had erred in applying the law enunciated in *Gibbs* v. *Messer*[1] where the facts are different and which was in any case a decision under the Victorian Transfer of Land Statute the provisions of which are very different from those in the said Act. As I was satisfied that the said Board had erred in its decision, I therefore allowed the appeal with costs and held that the Commissioner was right to confirm the claim of the appellant under section 53 of the said Act and that he may proceed to issue the appellant with the replacement title or endorse the replacement interest of the appellant on the appropriate folio of the Interim Register.

Appeal allowed.

Solicitors: *Thillaimuthu & Phock Kin; Ariffin & Co.*

CHIEW SZE SUN v. MUTHIAH CHETTIAR

[O.C.J. (Abdul Razak J.) March 23, 1981]

(Seremban – Originating Motion No. 118 of 1980)

Land Law – Caveat – Lien-holder's caveat created earlier than private caveat – Whether private caveat should have been rejected – National Land Code, 1965, ss. 327(1), 330(5) & 322(2).

This was an application to set aside an *ex-parte* order extending the period of a private caveat entered by the respondent on a piece of land and to order the Collector of Land Revenue, Seremban to cancel the said caveat entered against the land. In this case, the applicant had entered a lien-holder's caveat on the said land to protect his lien arising from a loan of $370,000 granted by him to one Letchumanan in which the latter had deposited the title deed with the applicant's solicitors. Subsequently, in pursuance of an agreement made by the respondent with Letchumanan, the former entered a private caveat on the same piece of land. The applicant accordingly applied to the Collector of Land Revenue to remove the respondent's caveat but the respondent applied for and obtained an extension of the private caveat until further order.

Held, allowing the application: in the light of sections 322(2) and 330(5) of the National Land Code, 1965 the lien-holder's caveat, being created first in point of time, prohibited the private caveat from being entered on the register document of title. The Collector of Land Revenue should have, having had the lien-holder's caveat endorsed on the document of title, rejected the private caveat.

ORIGINATING MOTION.

George Chelvaraj Proctor for the applicant.
M. Muthu Palaniyappan for the respondent.

Cur. Adv. Vult.

Abdul Razak J.: This Originating Motion seeks to set aside the *ex-parte* order made on August 21, 1980 in Originating Summons No. 94 of 1980 and to order the Collector of Land Revenue, Seremban to cancel the private caveat entered against the land held under E.M.R. 352 Lot 1051 and E.M.R. 526 Lot 900 Mukim of Rasah, Seremban (herein

referred to as "the land") and for consequential relief thereto. The *ex-parte* order was pursuant to an application by the respondent to extend the period of the private caveat entered by him earlier on the lands. This in turn was effected pursuant to a purported agreement made by the respondent with the owner of the lands one named Letchumanan in which the latter was said to have agreed to sell two housing lots in the said land in a proposed housing scheme wherein the respondent was purported to have paid the said Letchumanan a sum of $10,000 as deposit. The respondent alleged that it was agreed between him and the said Letchumanan (who incidentally was his own brother) that the said Letchumanan would allow the respondent to caveat the land to protect his interest until the issue of qualified title. We are in a somewhat difficult situation to verify the accuracy of this statement because the said Letchumanan never deposed to these facts or the fact that a housing scheme was a reality because this fact was disputed by the applicant. In any event, for the purpose of my decision it is not really material to the issue.

For the necessary determination of the issues it is material to note at this stage that the date of the respondent's creation of the private caveat was on May 3, 1980. It is material also to note that the applicant had earlier on September 1, 1979 lodged a lien-holder's caveat on the said land to protect his lien arising from a loan of $370,000 granted by him to the said Letchumanan in which the latter had deposited the title deed with the applicant's solicitors. It transpired thus that the Collector of Land Revenue had entered both the private caveat and the lien-holder's caveat on the same land. As would be expected therefore the applicant applied to the Collector of Land Revenue to remove the respondent's caveat but was responded by the respondent seeking and obtaining the *ex-parte* order above stated to extend the caveat until further order. Hence the present application to set it aside.

It is the applicant's contention that the respondent's caveat should have been rejected by the Collector of Land Revenue since it was created at a point of time after the applicant's lien-holder's caveat. The respondent's contention on the other hand was that the applicant had no registrable interest in the land which was a prerequisite to an application for removal. It is necessary therefore to look at the relevant sections of the National Land Code. Section 327(1) of the National Land Code which is necessarily the section under which the present application is made says:—

> "Any person or body aggrieved by the existence of a private caveat may at any time apply to the court for an order for its removal, and the court (acting, if the circumstances so require, *ex parte*) may make such order on the application as it may think just."

The section clearly shows it does not require an applicant to be a person who has a registrable interest to qualify him to apply as the respondent contends. It needs only be a person aggrieved by the existence of a private caveat and clearly a lien-holder is one although he has no registrable interest as long as he has an interest, a grievance.

But the next question that need be asked is much more fundamental. It is whether a lien-holder's caveat has priority over a private caveat where one is created earlier than the other. In this respect it is relevant to observe the provisions of section 330(5) which says:—

> "A lien-holder's caveat shall, so long as it continues in force, have the like effect as that specified in subsections (2) to (5) of section 322 in relation to private caveats, but as if the references in the said subsection (5) to the person or body at whose instance the caveat was entered were references to the person or body for the time being entitled to the benefit of the lien; and subsections (6) and (7) of the said section 322 shall also apply in relation to lien-holder's caveats as they apply in relation to private ones."

The effect of saying in section 330(5) that a lien-holder's caveat shall have the like effect as a private caveat is clearly thus in my humble view to substitute the words "private caveat" for the words "lien-holder's caveat" in cases and instances where they appear in section 322. Thus it necessarily follows that by the necessary application of section 322(2) which is directly relevant to our problem it would prohibit the private caveat from being entered on the register document of title as against the lien-holder's since the lien-holder's caveat was created earlier than the private caveat.

In my view therefore the Collector should, having had the lien-holder's caveat endorsed on the document of title, have rejected the private caveat.

I would therefore in the circumstances enter judgment for the applicant and make the order as prayed and costs.

Application allowed.

Solicitors: *K.P. Woon & Co.; Mahappan, Muthu & Peri.*